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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
THE GABLES CO-OPERATIVE
ASSOCIATION, INC.,

Appellant,

v

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 77-153

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$50 civil penalty for the alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney and Chris Smith, at a formal hearing on January 16, 1978 in Seattle. David Akana presided.

Appellant was represented by its president, William E. Bellinger and its secretary-treasurer, Catherine Wilkins. Respondent appeared through its attorney, Keith D. McGoffin

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Pollution Control

Hearings Board makes these

FINDINGS OF FACT

I

Pursuant to RCW 43 21E.260, respondent has filed with the Board a certified copy of its Regulation I and amendments thereto which are noticed

II

Appellant is the owner of an apartment building located at 409 - 16th Avenue East in Seattle, Washington.

On January 17, 1977, in response to a complaint, respondent's inspector visited appellant's apartment and saw emissions from the chimney. After observing an alleged violation of Regulation I, the inspector issued a notice of violation to appellant's secretary-treasurer. There is a substantial dispute, which we need not resolve, as to whether the inspector communicated the availability of the exculpatory provisions of Section 9 16¹ to appellant's agent at this time.

III

On September 20, 1977, at about 10 53 a m , respondent's inspector again visited the site of appellant's apartment in response to a complaint of smoke. The inspector observed the tan-colored emissions and recorded a reading of 100% opacity for six consecutive minutes. For the foregoing occurrence, appellant was sent a notice of violation which was appealed to respondent and this Board. At about the time of such appeal,

¹ Section 9.16 provides that excessive emissions resulting from unavoidable failures, upsets or breakdowns will not be deemed violations providing that certain conditions are met. One condition is that the agency be notified immediately of any such occurrence.

1 respondent issued a notice of civil penalty in the amount of \$50
2 which was also appealed to this Board

3 IV

4 The tan-colored emissions observed by the inspector were caused,
5 in part, by a defective valve in the boiler of the apartment. Water
6 from the valve smothered the furnace box fire and thereafter spilled
7 on the furnace room floor. Repairs to the boiler cost \$210.

8 V

9 On October 12, 1977 appellant's representative met with
10 respondent's agents and, as a result thereof, first came to understand
11 the availability of the exculpatory provisions of section 9.16.

12 VI

3 Any Conclusion of Law which should be deemed a Finding of Fact
14 is hereby adopted as such.

15 From these Findings the Board comes to these

16 CONCLUSIONS OF LAW

17 I

18 Appellant violated section 9.03(b) of Regulation I on September
19 20, 1977 by causing, or allowing the emission of an air contaminant
20 for more than three minutes in any one hour, which emission was of
21 such opacity as to obscure an observer's view to a degree equal to
22 or greater than 20% density. Appellant is charged with knowledge of
23 duly promulgated regulations, including the exculpatory provisions
24 of section 9 16. Since it did not avail itself of such provision,
25 we conclude that the violation must be upheld. The \$50 civil penalty
26 assessed pursuant to section 3 29 is reasonable in amount and should
27 be affirmed In view of the circumstances which led to the violation,

1 we conclude that payment of the civil penalty should be suspended, however.

2 II

3 Any Finding of Fact which should be deemed a Conclusion of Law is
4 hereby adopted as such.


5 From these Conclusions, the Board enters this

6 ORDER

7 The \$50 civil penalty is affirmed, provided however, that the
8 entire civil penalty is suspended on condition that appellant not
9 violate respondent's regulations for a period of one year after the
10 date of this Order.

11 DONE at Lacey, Washington, this 19th day of January, 1978.

12 POLLUTION CONTROL HEARINGS BOARD

13 
14 DAVE J. MOONEY, Member

15 
16 CHRIS SMITH, Member